



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,290	09/19/2003	Arjunan Ganesh	08321-0099 US1	9071

23973 7590 06/14/2006

DRINKER BIDDLE & REATH  
ATTN: INTELLECTUAL PROPERTY GROUP  
ONE LOGAN SQUARE  
18TH AND CHERRY STREETS  
PHILADELPHIA, PA 19103-6996

EXAMINER

ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/666,290

Applicant(s)

GANESH, ARJUNAN ET AL

Examiner

Shumaya B. Ali

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> .                  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 8,10,15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claims contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors), at the time the application was filed, had possession of the claimed invention. Limitations cited in claims 8,10, ant 15 are inconsistent or may not be found in the original disclosure.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 3743

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-7,9,11-12,14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christopher US Patent application publication US 2002/0108610A1**

4. As to claim 1, Christopher anticipates claimed limitation in figs. 1 and 2: a body (25) which is depicted as a tube which inherently have a distal end (insertable in the mouth) and a proximal end (situates outside of the mouth), since the length of the tube can be controlled by an operator and also predetermined depending on the surgical procedures, the tube can be sized and shaped to be disposed within the pharynx above the epiglottis and at a distance from the epiglottis (the size of the body would most likely to vary from patient to patient, i.e. it is obviously well known in the art that a child inter-oral device would most likely to be smaller than an adult inter-oral device. Therefore, the size of the device would vary depending on the age of the patient or size of the patient's oropharyngeal cavity. Therefore, Christopher's device is considered obvious to overcome applicant's amended claim 1, since it would have been obvious to one of ordinary skills in the art to construct the an inter-oral device in varying sizes and shapes to accommodate different patients); at least one channel (lumen of the body) forming at least one airway in the device body extending between the proximal end and the distal end of the device body; at least one first conduit (130) in the device body for conveying an inhalant gas to the patient that extends from the proximal end to the distal end of the device body; at least one second conduit (it would have been obvious to include a conduit for suction secretion from the patient's mouth and airway, see page 3, 0039) for

Art Unit: 3743

suctioning that extends from the proximal end to the distal end of the device body; and at least one third conduit (140) for sampling gas exhaled by the patient that extends from the proximal end of the device body and terminates at a position in the channel.

5. **As to claim 2**, Christopher discloses the oropharyngeal device according to claim 1 wherein at least one of the at least one first, second, and third conduits is disposed within the device body (see fig.1 and 2).

6. **As to claims 3-6**, the limitations are not considered to be critical since the where the conduits will be situated long the length of the body may vary between patients and procedures. Therefore, meeting one of the limitations cited in claims 3-6 would considered to meet all claimed limitation. Christopher discloses “with the guide or formed as a conduit” (claim 4) page 3, 0034.

7. **As to claim 7**, Christopher discloses the oropharyngeal device according to claim 1 wherein the at least one channel has a U-shaped cross section (channel where conduits 130 and 140 are situated are considered to have U-shaped cross second).

8. **As to claim 9**, Christopher discloses the oropharyngeal device according to claim 1 wherein the device is rigid and functions as a bite block (pg.2 0031, lines 1-4).

9. **As to claim 11**, Christopher discloses the oropharyngeal device according to claim 1 wherein the first, second, and third conduits are coupled to connectors (pg. 3, 0040 line 8) at the proximal end of the device for connecting to an inhalant gas source, a suctioning device, and a gas sampling device, respectively (fig.1 seems to depict all conduits 130, 140 have connecting means at the proximal end of the conduits that allows connecting of the conduit to air supplies)

Art Unit: 3743

10. As to **claim 12**, Christopher discloses the oropharyngeal device according to claim 1 further comprising at least one flexible extension (conduit are considered extension conduit due to having connector means) conduit coupled to at least one of the first, second, and third conduits at the proximal end of the device body (all conduits are considered flexible since they are insertable through a bent tube).

11. As to **claim 14**, Christopher does not disclose “right angled connector”. Since connectors comes in various sizes and shapes it would have been obvious to one of ordinary skills in the art to substitute one type of connectors with another for the purposes of meeting their needs.

12. As to **claim 16**, Christopher reference discloses and considered obvious in teaching all structural limitation cited in claim 16, therefore, the method steps would have been obvious using the apparatus disclosed by Christopher.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christopher US Patent application publication US 2002/0108610A1 in view of Kinner et al. US Patent 3,756,244**

13. As to **claim 13**, Christopher does not disclose, “flange”, however Kinner et al. teach flanges (fig.2, 16) at one end of a breathing aid. Therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the device of Christopher in view of Kinner et al. in order to include a flange for the purposes of preventing the device from further entering the mouth or extending deeper into the pharynx and avoiding choking (col.1 lines 14-17).

Art Unit: 3743

**Claims 1 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenberg US Patent No. 5,976,072 in view of Christopher US Patent application publication US 2002/0108610A1**

14. As to claim 1, Greenberg discloses an oral airway device in figures 1-4 with: a body (the entire length, figure 1 in general) which is depicted as a tube which inherently have a distal end (insertable in the mouth, 36) and a proximal end (situated outside of the mouth, 12), the tube can be sized and shaped to be disposed within the pharynx above the epiglottis and at a distance from the epiglottis (see col.3, lines 2-25, "edge 36 of the COPA cuff to emerge in the hypopharynx at the level just above the epiglottis"); at least one channel (lumen of the body) forming at least one airway in the device body extending between the proximal end and the distal end of the device body; at least one first conduit (50) in the device body for conveying (recitation of intended use is not given patentable weight in an apparatus claim) an inhalant gas to the patient that extends from the proximal end to the distal end of the device body; Greenburg however does not disclose at least one second conduit for suctioning that extends from the proximal end to the distal end of the device body; and at least one third conduit for sampling gas exhaled by the patient that extends from the proximal end of the device body and terminates at a position in the channel, applicant is reminded that recitation of intended use is not given any patentable weight in an apparatus claim, therefore the use of the third and second conduit would not hold patentable weight. Reference to Christopher teaches multiple conduit use with oral airway device, see rejection based on Christopher's reference as stated above for claim 1. Therefore, it would have been obvious to include multiple conduit means to the device of Greenburg in view of Christopher to carry out multiple

Art Unit: 3743

tasks such as suctioning, sampling gas, and/or to introduce inhalation gas using those conduit means as taught by Christopher (see page 3, 0039)


15. As to claim 16, Greensburg in view of Christopher discloses and considered obvious in teaching all structural limitation cited in claim 16, therefore, the method steps would have been obvious using the apparatus disclosed by Greensburg in view of Christopher.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shumaya B Ali  
Examiner  
Art Unit 3743

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700